

The contractor will include these additional required contract provisions in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or orders, or instructions issued pursuant thereto. The contractor will take such action with respect to any subcontract, procurement, or lease as the State highway department or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for non-compliance: *Provided, however, That, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor, supplier, or lessor as a result of such directed action, the contractor may request the State to enter into such litigation to protect the interest of the State, and, in addition, the contractor may request the United States to enter into such litigation to protect the interest of the United States.*

6. *Sanctions for noncompliance.*

In the event of the contractor's noncompliance with sections 1 through 5 above, the State highway department shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to.

a. Withholding of payments to the contractor under the contract until the contractor complies, and/or

b. Cancellation, termination or suspension of the contract in whole or in part.

[40 FR 49088, Oct. 21, 1975]

APPENDIX D TO SUBPART B OF PART
633—FEDERAL-AID PROPOSAL NOTICES

NOTICES TO PROSPECTIVE FEDERAL-AID
CONSTRUCTION CONTRACTORS

I. *Certification of nonsegregated facilities.*

(a) A Certification of Nonsegregated Facilities, as required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7439, May 19, 1967) on Elimination of Segregated Facilities (is included in the proposal and must be submitted prior to the award of a Federal-aid highway construction contract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause).

(b) Bidders are cautioned as follows: By signing this bid, the bidder will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in this proposal. This certification provides that the bidder does not maintain or provide for his employees facilities which are segregated on a basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the bidder will not maintain such segregated facilities.

(c) Bidders receiving Federal-aid highway construction contract awards exceeding

\$10,000 which are not exempt from the provisions of the Equal Opportunity clause, will be required to provide for the forwarding of the following notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

NOTICE TO PROSPECTIVE SUBCONTRACTORS AND
MATERIAL SUPPLIERS OF REQUIREMENT FOR
CERTIFICATION OF NONSEGREGATED FACILITIES

(a) A Certification of Nonsegregated Facilities is required by the May 9, 1967, Order of the Secretary of Labor (32 FR 7431, May 19, 1967) on Elimination of Segregated Facilities, which is included in the proposal, or attached hereto, must be submitted by each subcontractor and material supplier prior to the award of the subcontract or consummation of a material supply agreement if such subcontract or agreement exceeds \$10,000 and is not exempt from the provisions of the Equal Opportunity clause.

(b) Subcontractors and material suppliers are cautioned as follows: By signing the subcontract or entering into a material supply agreement, the subcontractor or material supplier will be deemed to have signed and agreed to the provisions of the "Certification of Nonsegregated Facilities" in the subcontract or material supply agreement. This certification provides that the subcontractor or material supplier does not maintain or provide for his employees facilities which are segregated on the basis of race, creed, color, or national origin, whether such facilities are segregated by directive or on a de facto basis. The certification also provides that the subcontractor or material supplier will not maintain such segregated facilities.

(c) Subcontractors or material suppliers receiving subcontract awards or material supply agreements exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause will be required to provide for the forwarding of this notice to prospective subcontractors for construction contracts and material suppliers where the subcontracts or material supply agreements exceed \$10,000 and are not exempt from the provisions of the Equal Opportunity clause.

II. *Implementation of Clean Air Act.*

(a) By signing this bid, the bidder will be deemed to have stipulated as follows:

(1) That any facility to be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*, as by Pub. L. 91-604), Executive order 11738, and regulations in implementation thereof (40 CFR part 15, is not listed on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

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(2) That the State highway department shall be promptly notified prior to contract award of the receipt by the bidder of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

PART 635—CONSTRUCTION AND MAINTENANCE

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AUTHORITY: Sec. 1503 of Pub. L. 109–59, 119 Stat. 1144; 23 U.S.C. 101 (note), 109, 112, 113, 114, 116, 119, 128, and 315; 31 U.S.C. 6505; 42 U.S.C. 3334, 4601 *et seq.*; Sec. 1041 (a), Pub. L. 102–240, 105 Stat. 1914; 23 CFR 1.32; 49 CFR 1.48(b).

EDITORIAL NOTE: Nomenclature changes to part 635 appear at 67 FR 75924, Dec. 10, 2002.

Subpart A—Contract Procedures

SOURCE: 56 FR 37004, Aug. 2, 1991, unless otherwise noted.

§ 635.101 Purpose.

To prescribe policies, requirements, and procedures relating to Federal-aid highway projects, from the time of authorization to proceed to the construction stage, to the time of final acceptance by the Federal Highway Administration (FHWA).

§ 635.102 Definitions.

As used in this subpart:

Administrator means the Federal Highway Administrator.

Calendar day means each day shown on the calendar but, if another definition is set forth in the State contract specifications, that definition will apply.

Contract time means the number of workdays or calendar days specified in a contract for completion of the contract work. The term includes authorized time extensions.

Design-build project means a project to be developed using one or more design-build contracts.

Division Administrator means the chief FHWA official assigned to conduct business in a particular State. A State is as defined in 23 U.S.C. 101.